

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

LIVINGSTON HEARING AID CENTER, )  
INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
INSOUND MEDICAL, INC., )  
 )  
Defendant. )

Case No. 5:11-CV-01965 EJD

**ORDER GRANTING  
MODIFICATION OF SCHEDULING  
ORDER; GRANTING PLAINTIFF'S  
MOTION FOR LEAVE TO FILE  
FIRST AMENDED COMPLAINT**

Presently before the court is Livingston Hearing Aid Center's ("Plaintiff") motion for leave to file first amended complaint, filed on January 26, 2012. See Docket Item No. 49. Having reviewed the parties' submissions, the court finds this matter appropriate for decision without oral argument pursuant to Civil Local Rule 7-1(b). Accordingly, the hearing scheduled for April 6, 2012 is VACATED.

Plaintiff originally filed its Complaint against InSound Medical ("Defendant") in Texas state court. The action was removed to the Northern District of Texas on April 1, 2011, and subsequently was transferred to this district on April 18, 2011. This court issued a Case Management Order on October 24, 2011. See Docket Item No. 46. The deadline set by the court for parties to seek leave to amend their pleadings was December 23, 2011. Id.

On December 16, 2011, Plaintiff sent Defendant their proposed first amended complaint. Defendant informed Plaintiff on January 24, 2012 that it would not stipulate to the filing of the proposed first amended complaint. Two days later, Plaintiff filed the instant motion.

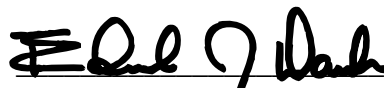
Under Federal Rule of Civil Procedure 15(a), which generally governs the amendment of complaints, “[t]he court should freely give leave when justice so requires.” However, Rule 16(b)(4), which applies once a pretrial schedule has been set, requires that modifications to the schedule may be made “only for good cause and with the judge’s consent.” See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604 (9th Cir. 1992). The court treats a motion for leave to amend pleadings after the scheduling order deadline as a motion to modify the scheduling order. See Coleman v. Quaker Oats Co., 232 F.3d 1271, 1294 (9th Cir. 2000).

In determining whether good cause exists, courts consider “the diligence of the party seeking the extension.” Johnson, 975 F.2d at 609. Unlike the cases relied upon by Defendant, Plaintiff proposed a first amended complaint to Defendant before the deadline set in the Case Management Order. Defendant waited over a month before notifying Plaintiff that it would not stipulate to the filing of the proposed first amended complaint and Plaintiff filed the instant motion two days later. Additionally, in the parties’ Joint Case Management Statement, Plaintiff noted that it anticipated amending its pleadings to include California state and federal claims. See Docket Item No. 45. This statement alerted Defendant and this court that Plaintiff intended to amend its pleadings.

Accordingly, the court GRANTS a modification of the scheduling order and Plaintiff’s motion for leave to file first amended complaint. Plaintiff shall file an amended complaint no later than April 10, 2012.

**IT IS SO ORDERED.**

Dated: April 3, 2012



EDWARD J. DAVILA  
United States District Judge